

WC 04-159

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Fox Paine & Company, LLC

File No. _____

Application for Transfer of Control of Alaska
Communications Systems Group, Inc.'s
Domestic and International Authorizations
Under Section 214 of the Communications
Act of 1934, as Amended

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APPLICATION FOR TRANSFER OF CONTROL OF
DOMESTIC AND INTERNATIONAL SECTION 214 AUTHORIZATIONS

Fox Paine & Company, LLC ("Fox Paine" or "Transferor") and Alaska Communications Systems Group, Inc. ("Transferee" or "ACS") hereby seek authorization to transfer control pursuant to Sections 63.04(b) and 63.24 of the Commission's Rules from Fox Paine to ACS of the Section 214 authorizations held by ACS's subsidiaries to provide domestic switched, private line, data and business services to all interstate points and international resale services pursuant to the international Section 214 authorization held by ACS Long Distance, Inc. ("ACS LD"), File No. ITC-T/C-19981214-00915. ACS's subsidiaries include ACS Wireless, Inc., ACS of Anchorage, Inc., ACS of Alaska, Inc., ACS of Fairbanks, Inc., ACS of the Northland, Inc., ACS LD and ACS Internet, Inc. There will be no adverse effect upon competition in the provision of domestic interstate or international telecommunications services as the result of the proposed transfer of control.

The subject transfer of control is part of a transaction by which Fox Paine will relinquish control over ACS through the Transaction described in point 6 of Attachment 1, reducing Fox Paine's interest to less than 35% of ACS's voting equity. Fox Paine will not retain any right to appoint members of the board of directors of ACS or any special management, voting or

approval rights as a shareholder of ACS. Thus, ACS will assume ultimate corporate control over its subsidiaries. This application does not result in an acquisition of corporate control or any lessening of competition, and therefore should qualify for streamlined processing of the transfer of control over the domestic authorizations pursuant to Section 63.03 of the Commission's Rules, as described further in Attachment 1, Item 8. In the event that the Commission's Staff determines that this application does not qualify for streamlined treatment pursuant to Section 63.03, the applicants request expedited review of this application. The transaction that is the subject of this application is necessary for the recapitalization of ACS and is subject to sensitive market conditions. Failure to promptly conclude the transaction could have negative implications for ACS and its customers.

This application also qualifies for streamlined processing of the transfer of control over the international authorization of ACS LD pursuant to Section 63.12 of the Commission's Rules. In support of this request, the applicants submit the following information as required by Sections 63.04 and 63.18 of the Commission's Rules:

(a) Name, Address and Telephone Number of Transferor:

Fox Paine & Company, LLC
950 Tower Lane, Suite 501
Foster City, CA 94404
Telephone: (650) 235-2075

Name, Address and Telephone Number of Transferee:

Alaska Communications Systems Group, Inc.
600 Telephone Ave, MS 65
Anchorage, AK 99503
Telephone: (907) 297-3000

- (b) Transferor is a Delaware limited liability company. Transferee is a Delaware corporation.
- (c) All correspondence on behalf of the Transferor should be sent to:

Wray Thorn
Fox Paine & Company, LLC
245 Park Avenue, 24th floor
New York, New York 10167
Telephone: (212) 792-4342

with a copy to:

Warren G. Lavey
Skadden, Arps, Slate, Meagher & Flom LLP
333 W. Wacker Drive
Chicago, IL 60606
Telephone: (312) 407-0700

All correspondence on behalf of the Transferee should be sent to:

Leonard A. Steinberg
General Counsel
Alaska Communications Systems Group, Inc.
600 Telephone Ave, MS 65
Anchorage, AK 99503
Telephone: (907) 297-3000

(d) Statement of previously received Section 214 authority:

By grant of approval of a transfer of control effective April 7, 1999, ACS LD has held global resale authority under Section 214 pursuant to File No. ITC-T/C-19981214-00915.

ACS and its operating subsidiaries also possess blanket Section 214 authorizations, pursuant to Section 63.01 of the Commission's Rules, to provide domestic switched, private line, data and business services to all interstate points. This application also seeks authority for the transfer of control over that domestic authority pursuant to Section 63.04(b) of the Commission's Rules. The information requested by Sections 63.04(a)(6)-(12) is attached in Attachment 1 below.

Transferor does not hold any other Section 214 authorizations.

- (e) ACS LD will continue to provide global resale services, operating as a resale carrier pursuant to the terms and conditions of Section 63.18(e)(2) of the Commission's rules. Transferee certifies that it will comply with the terms and conditions contained in 47 C.F.R. §§ 63.21 and 63.23.
- (f) n/a

- (g) n/a
- (h) To the best of the applicants' knowledge, Fox Paine will indirectly, through its affiliates, control less than 35% of the common stock of ACS after the completion of the transaction. If the underwriters exercise their over-allotment option, Fox Paine could retain as little as 5% of the common stock of ACS. Fox Paine's address is set forth in (a) above. Fox Paine is a U.S. citizen, its primary business is investing. ACS will not have a directorate which interlocks with a foreign carrier's.
- (i) Transferee certifies that it is not itself a foreign carrier and is not affiliated with a foreign carrier.
- (j) n/a See Section (i) above.
- (k) n/a See Section (i) above.
- (l) n/a See Section (i) above.
- (m) n/a See Section (i) above.
- (n) Transferee certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the U.S. and any foreign country which the applicant may serve under the authority granted under this part and will not enter into such agreements in the future.
- (o) Transferee certifies that, to the best of its knowledge, information and belief, neither Transferee nor any party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a.
- (p) ACS is not itself a foreign carrier and is not affiliated with a foreign carrier. The applicants are not seeking to expand the authority previously granted to ACS LD. None of the provisions of Section 63.12(c) apply to the applicant. Therefore, this application qualifies for streamlined processing pursuant to Section 63.12(a) of the Commission's Rules.

Wherefore, the parties to this application respectfully submit that the present and future public convenience and necessity will be served by the grant of this transfer of control application. The parties certify that the statements contained in the foregoing document are true, correct and complete to the best of their knowledge, information and belief. Accordingly, the parties respectfully request that the Commission grant this application.

Respectfully submitted,

Fox Paine & Company, LLC

By: _____

Name: W. Dexter Paine

Title: President

Date: _____

Alaska Communications Systems Group, Inc.

By: 

Name: Leonard A. Steinberg

Title: General Counsel

Date: April 12, 2004

Attachment 1

Pursuant to Section 63.04(b) of the Commission's Rules, the applicants include in this Attachment 1 the information required by Sections 63.04(a)(6)-(12) of the Commission's Rules:

(6) Description of Transaction:

ACS plans to engage in a recapitalization transaction (the "Transaction"). As part of this transaction, ACS proposes to make an underwritten public offering of Income Deposit Securities, or IDSs, and a separate offering of new senior subordinated debt securities issued by ACS and guaranteed by substantially all of its subsidiaries (the "Notes"). Each IDS is a unit comprised of a share of newly-issued class A common stock of ACS and a Note. The net proceeds of the offerings, together with a portion of the cash on the ACS balance sheet, would be used to pay down certain existing indebtedness of ACS, pay fees and expenses and finance a *pro rata* cash payment to the existing ACS stockholders in the reclassification described in the next paragraph.

At the time of the closing of the offerings, ACS intends to undertake a reclassification of its common stock outstanding prior to the offerings pursuant to the terms of Section 242 of the General Corporation Law of the State of Delaware (the "Reclassification"). As a result of the Reclassification, each share of ACS common stock outstanding immediately prior to the consummation of the Reclassification will be reclassified into a combination of cash and shares of newly-issued class B common stock of ACS (the "Class B Common Stock"). Pursuant to the terms of the Class B Common Stock: (i) a portion of the shares of Class B Common Stock issued in the Reclassification will be subject to *pro rata* redemption from the net proceeds to ACS of any exercise of the option granted by ACS to the underwriters to purchase additional IDSs (identical to those sold to the public in the underwritten offering) from ACS to satisfy overallotments in the offerings (the "Redemption"); (ii) a specified portions of the shares of Class B Common Stock not so redeemed will be exchanged into IDSs (identical to those sold to the public in the underwritten offering) on the 12th day following the closing of the Reclassification (the "Initial Exchange"); and (iii) any remaining shares of Class B Common Stock issued in the Reclassification will be exchanged into IDSs (identical to those sold to the public in the underwritten offering), subject to certain conditions, on the second anniversary of the closing of the Reclassification. The shares of Class B Common Stock remaining outstanding after giving effect to the Redemption and the Initial Exchange will be equal to 10% of ACS's overall equity capitalization.

Upon completion of the proposed offerings and the Reclassification, the common stock ownership percentages of the existing ACS stockholders would be significantly diluted. Fox Paine's current approximate 66% ownership interest in the common stock of ACS (on a fully-diluted basis) is expected to be reduced to

less than a 35% interest (prior to the effect of the underwriters' overallotment option which, if fully exercised, would result in a further reduction in Fox Paine's post-transaction ownership percentage). Fox Paine will not retain any right to appoint members of the board of directors of ACS or any special management, voting or approval rights as a shareholder of ACS.

- (7) Fox Paine does not own or operate telecommunications facilities. Fox Paine is not affiliated with any other domestic telecommunications services providers. ACS owns and operates telecommunications facilities in the State of Alaska.
- (8) This application qualifies for streamlined processing pursuant to Section 63.03 of the Commission's Rules. As described above, the Transaction results in a relinquishment of control, but no acquisition of control because no person will have more than 35% of the voting equity or a special or contractual right to appoint members of the board of directors of ACS or any special management, voting or approval rights as a shareholder of ACS. If the underwriters exercise their over-allotment option, Fox Paine could retain as little as 5% of the common stock of ACS.

The Commission has stated that "certain types of transactions that by their nature are extremely unlikely to raise potential public interest harm should presumptively be afforded streamlined treatment." Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, 17 FCC Rcd 5517, ¶ 29 (March 21, 2002) (the "Streamlining Order"). While the Commission went on to list several categories of transactions presumptively eligible for streamlined processing, it also stated that "if an application fails to qualify for the presumption, it may still be entitled to streamlined treatment under the case-by-case approach." Id. at ¶¶ 28, 34 (citation omitted).

The Commission's discussion of several bases for presumptively streamlining certain transaction categories indicates that this application should receive streamlined treatment. First, the Commission stated that "we find that a transaction is unlikely to raise public interest concerns where the transferee is not a telecommunications carrier because in such situations there is not likely to be an increase in concentration in a particular market." Id. at ¶ 29. This is also true of a relinquishment of control, since there is no change in the concentration of any market. Indeed, the focus of the Commission's discussion in the Streamlining Order is on the harms to competition that may arise from the combination of two carriers' operations. Id. In the Transaction, there is no combination of carriers and no possible harm to competition.

The Commission went on to state that:

Based on the Commission's section 214 precedent, we find that combinations involving incumbent independent LECs with fewer

than two percent of the nation's subscriber lines raise less significant public interest concerns than those in which one of the parties is a larger incumbent independent LEC. For example, we have concluded in past orders that such transactions are unlikely to raise public interest concerns if the applicants do not actually compete in each other's local exchange area and do not have incumbent local exchange areas that are adjacent to each other. Accordingly, we conclude that when the parties to a domestic section 214 transfer application are incumbent independent LECs that have, in combination, fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide, and no overlapping or adjacent service areas, we will presumptively streamline the transfer application, provided that [the transferee's market share in the interstate, interexchange market following the transaction would be less than 10 percent].

Id. at ¶ 32 (citations omitted). ACS's market share of national interexchange interstate services is less than 1%. Moreover, the Transaction does not combine the operations of two carriers. The Transaction should receive streamlined treatment pursuant to this recognition that there will be no negative competitive impact from the change in ownership of ACS.

Lastly, the Commission acknowledged that "transfers of incumbent LEC local exchange assets are unlikely to raise the potential of competitive harm." Id. at ¶33 (citation omitted). The Commission reasoned that its experience demonstrated that the asset sale transactions generally "did not raise public interest issues, and often involved the sale of rural exchanges from larger incumbent LECS to smaller incumbent LECs that specialize in providing service in rural areas." Id. (citation omitted). Although the Transaction results in a transfer of control through a stock transaction rather than an asset sale, it is similar to the transfer of incumbent LEC local exchange assets in that it does not raise the potential of competitive harm and involves a small incumbent LEC that specializes in providing services in rural areas. The Transaction, therefore, should receive streamlined treatment.

Because no new party is gaining control over ACS and because the public will gain greater accountability from management of ACS (see point 12 below), a relinquishment of control over a carrier to the public is unlikely to raise potential public interest harms. The Transaction therefore should be granted streamlined processing under Section 63.03 of the Commission's Rules.

- (9) The applicants are also submitting applications for the transfer of control over the wireless licenses held by ACS's subsidiaries. Those applications have been filed in the ULS as file numbers 0001693635, 0001693679, 0001693631, 0001693248, and 0001693478.

- (10) No special consideration is requested. Neither party is facing imminent business failure.
- (11) No waiver requests are being filed with this application.
- (12) The public offerings by ACS would provide financing to ACS which would promote efficient, high-quality services and competition in local and long distance telephone services in Alaska. The Transaction would not reduce the number of competitors in the marketplace but would strengthen ACS's ability to compete and provide services to the public.

The Transaction's primary benefit for the public is that it would lower ACS's cost of capital and deleverage the consolidated assets of ACS. In part, this stems from the refinancing of ACS's debt at longer maturities, reducing its refinancing risk. The Transaction would also ease ACS's future access to the equity and debt capital markets. The Transaction would improve ACS's ability to issue new equity securities and increase its market capitalization. This would attract more institutional investors to ACS, including, perhaps, top-tier investment firms and money managers, and would create a much larger equity base for ACS than it currently has. These changes would strengthen the finances of ACS, improving its ability to serve the public and compete in the marketplace.

The IDS security would provide ACS with the legal ability to use its discretion in making distributions on the common stock equity component of the IDS unit. ACS has every intention of meeting its dividend policy, but would retain the right to control its dividend payments. ACS, therefore, will retain the right and ability to address temporary variations in cash flow sources and needs. This could potentially help ACS meet the needs of its customers. The Transaction would accomplish this without requiring a change in ACS's experienced management team.

The Transaction would also increase the public accountability of ACS. ACS would remain subject to public market scrutiny (as the IDSs would be listed on a major stock market) and the new Sarbanes-Oxley Act and stock exchange corporate governance requirements. As a result of the Transaction, the company would no longer be eligible for "controlled company" exceptions to the stock exchange governance requirements, so it would become subject, for example, to stricter independence criteria for its board of directors. This would increase the public accountability of ACS and improve its service to its shareholders and customers.

The proposed transfer of control of ACS would not adversely affect competition in the provision of domestic interstate telecommunications services in the State of Alaska.